

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

CENTURY INDEMNITY COMPANY, ET  
AL.

Plaintiffs,

Versus

FREEPORT-MCMORAN COPPER &  
GOLD INC., ETC.

Defendant.

ELECTRONICALLY FILED

CIVIL ACTION NO.: 08 CV 02012

PKL/DCF

**AFFIDAVIT OF VANCE A. WOODWARD SUBMITTING NEWLY DISCOVERED  
EVIDENCE IN SUPPORT OF THE CONTINENTAL INSURANCE COMPANY'S  
MEMORANDUM OF LAW IN OPPOSITION TO FREEPORT-MCMORAN  
COPPER AND GOLD INC.'S MOTION TO DISMISS OR STAY THIS ACTION**

I, Vance A. Woodward, swear that the following is true, upon personal knowledge, under penalties of perjury.

1. I am an associate at the Carroll, Burdick & McDonough, LLP law firm in San Francisco, California.

2. I am a member in good standing of the bars of California and New York.

3. I submit this affidavit to present newly discovered evidence in support of The Continental Insurance Company's Memorandum of Law in Opposition to Freeport-McMoRan Copper and Gold Inc.'s Motion to Dismiss or Stay This Action.

4. Attached hereto as **Exhibit A** is a true and correct copy of the motion to dismiss and supporting documents filed by The Continental Insurance Company and Century Indemnity Company in *Cyprus Amax Minerals Co v. Cont'l Cas. Co.*, No. BC391068 (Cal. Super. Ct., Los Angeles County, complaint filed May 16, 2008). Specifically, **Exhibit A** includes the following:

- Notice of Motion and The Continental Insurance Company's and Century Indemnity Company's Joint Motion to Dismiss or Stay the Action Based on *Forum Non Conveniens*
- Memorandum of Points and Authorities in Support of The Continental Insurance Company's and Century Indemnity Company's Joint Motion to Dismiss or Stay the Action Based on *Forum Non Conveniens*
- Request for Judicial Notice in Connection with The Continental Insurance Company's and Century Indemnity Company's Joint Motion to Dismiss or Stay the Action Based on *Forum Non Conveniens*
- Non-California Authorities Supporting The Continental Insurance Company's and Century Indemnity Company's Joint Motion to Dismiss or Stay the Action Based on *Forum Non Conveniens*
- Declaration of Vance Woodward in Support of The Continental Insurance Company's and Century Indemnity Company's Joint Motion to Dismiss or Stay the Action Based on *Forum Non Conveniens*
- Declaration of Robert Galardi in Support of The Continental Insurance Company's Motion to Dismiss or Stay the Action Based on *Forum Non Conveniens*
- Declaration of David Lehman in support of The Continental Insurance Company's Motion To Dismiss or Stay the Action Based On *Forum Non Conveniens*
- Declaration of Margo Dedeyan in Support of The Continental Insurance Company's and Century Indemnity Company's Motion to Dismiss or Stay the Action Based on *Forum Non Conveniens*

5. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the "Realtime Rough Draft" deposition transcript of the deposition of Mr. Bobby Medlin, taken on June 23 and June 24, 2008.

6. Mr. Medlin currently works at Enviro-Tox Loss Services ("ETLS") and has worked at ETLS since August 2003. Ex. B, Medlin Dep. Tr., 11:20 – 13:18.

7. During his employment with ETLs, defendant Freeport-McMoRan has been a client of ETLs and Mr. Medlin has worked on the Freeport-McMoRan account. Ex. B, Medlin Dep. Tr., 11:19 – 12:15; 18:14 – 20; 20:9 – 21:12.



Vance A. Woodward, affiant

STATE OF CALIFORNIA )

) ss

COUNTY OF SAN FRANCISCO )

Subscribed and sworn to before me on this 1st day of July 2008, by Vance A. Woodward, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

  
\_\_\_\_\_  
Notary Public

# **EXHIBIT B**

ROUGH DRAFT - NOT A FINAL

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1 REALTIME ROUGH DRAFT

2 BOBBY J. MEDLIN

3 JUNE 23, 2008

4 CONFIDENTIAL

5  
6 The stenographic notes taken in the within  
7 proceeding have been translated instantaneously into  
8 their English equivalents through a computerized process  
9 called realtime translation

10 A realtime rough draft, in ASCII format, is  
11 available to all counsel on a diskette. The realtime  
12 text as seen on the computer monitor at the site of  
13 these proceedings, as well as the rough draft ASCII  
14 transferred onto a diskette, is unedited and uncertified  
15 and may contain untranslated stenotype, misspelled  
16 proper names and technical words, occasional reporter's  
17 notes, and/or nonsensical English word combinations.  
18 These will be corrected on the final certified  
19 transcript upon its delivery to you in accordance with  
20 our standard delivery terms, or on an expedited basis,  
21 as requested.

22 The realtime rough draft is intended only for  
23 the purpose of augmenting counsel's notes and is not  
24 intended to be used or cited in any court proceeding as  
25 representing a final edited and proofread transcript.

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1 employment history. You mentioned you've worked long  
2 enough in the insurance industry that you're excempte  
3 from continuing legal -- continuing education?

4 A. Education.

5 Q. Rather. How many years have you worked in the  
6 insurance industry total?

7 A. It hurts to say that, but 38.

8 Q. 38 years?

9 A. Yeah. I started in March of 1970.

10 Q. And please name some of the companies that  
11 you've worked for in those 38 years.

12 A. I've worked for -- I started out with safeco  
13 insurance /(. I had my own company for right at 14  
14 years, was Frontier Adjusters. I worked with Trinity  
15 for a while. I worked for Houston General for about  
16 three, four years, until they -- until Tokyo Marine sold  
17 the company. And then I went to work for Cunningham  
18 Lindsey /(.

19 After that, I went into temporary work for a  
20 while, and then in August of '03 I went to work for ETLs  
21 as temp. They had taken an a project with Phelps Dodge  
22 Industries and they had approximately 250/60 boxes of  
23 materials that they wanted reviewed and I went to work  
24 to do that. They needed someone with pretty good  
25 insurance experience to take a look at those documents.

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1 It was not a reel detailed inspection as far as looking  
2 at each and every page and cataloging those. It was --  
3 we were looking for company histories dating back into  
4 the late 1800s/early 1900s with several different  
5 companies that come under the Phelps damage mantle. We  
6 were looking for insurance policies that would apply to  
7 a lot of their complex litigation, their long tail  
8 claims (crkt) that we could put together document  
9 programs of insurance for each one of the subsidiary  
10 companies and basically archaeology work for a long  
11 time.

12 And then I went to work for them  
13 permanently -- once we sold the project was -- would be  
14 semipermanent I went to work for ETLS in December of 03  
15 as a permanent employee.

16 Q. And ETLS is -- stands for what?

17 A. Enviro-Tox Loss Services.

18 Q. And you said you started temping in summer  
19 2003, correct?

20 A. I'm sorry, what?

21 Q. You started as a temporary employee in the  
22 summer of 2003?

23 A. Right. I -- if I'm not mistaken Phelps  
24 Dodge -- or the time period when Enviro-Tox first got  
25 the assignment to do work for them was in May or June of



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1 '03 which I'm not certain of that because I wasn't  
2 there. And -- but yes, in August of '03 I went to work  
3 as a temporary.

4 Q. And why were you temping at that time?

5 A. At that time I was between jobs. The work at  
6 Cunningham was getting to a point where it was a little  
7 bit uncontrollable as far as when I went to work there I  
8 was supposed to work Houston general claims only and by  
9 the time I left I was working five or six other  
10 companies as well.

11 Q. And then you mentioned that you were hired as  
12 a permanent employee at ETLS later in 2003. Do you  
13 recall --

14 A. December.

15 Q. December 2003?

16 A. Right, uh-huh (Affirmative.)

17 Q. And are you currently employed at ETLS?

18 A. Yes, I am.

19 Q. What is your current title?

20 A. Well, we really don't have titles at ETLS.

21 I'm an adjuster, insurance adjuster.

22 Q. What type of clients does ETLS serve?

23 A. We serve both insurance carrier clients as  
24 well as corporate clients.

25 Q. And briefly describe the kind of services that



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1 of boxes --

2 A. Uh-huh (Affirmative.)

3 Q. -- of insurance documents. Do you know where  
4 the boxes came from? Were you told where the boxes came  
5 from?

6 A. Yes, I do. Those boxes, I believe -- and I  
7 think I'm? ? On this came from the Zevnik Horton law  
8 firm /( who had been coverage counsel for Phelps Dodge  
9 in the Cyprus AMAX companies for quite some time.

10 Q. Did you work for any other client when you  
11 were a temporary employee at ETLS?

12 A. Not as a temporary, no. As a temporary my  
13 sole duties were inspection of documents.

14 Q. During your time as a permanent employee at  
15 ETLS, have you worked for any other clients?

16 A. A few. My biggest job at ETLS is the Phelps  
17 Dodge program, but I have assisted on a few other  
18 things, just on a necessary time when somebody might be  
19 out or they had a little bit more than what they could  
20 do, that we helped -- helped out on that.

21 Q. And you've been referring to the company  
22 client in -- at issue as Phelps Dodge. What are some of  
23 the affiliated companies of Phelps Dodge that you  
24 provide services for?

25 A. Oh, gosh. Well, you could track the line with

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1 Cyprus, originally Cyprus Mines (crkt), they took Sierra  
2 Talc, United Clay, a bunch of companies along. I think  
3 they started somewhere around the turn of the Century.  
4 AMAX? ? That had other facilities that -- we tracked  
5 back through all of those. AMAX and Cyprus came  
6 together in '93 as Cyprus AMAX and they were absorbed by  
7 Phelps Dodge in 1999. Phelps Dodge itself I think they  
8 were in business in the mid to late 1800s. And they've  
9 had several subsidiary companies along the way taking  
10 over other companies along the way, so we have actually  
11 worked for each and every one of those companies at some  
12 time period if some specific thing pops up that we need  
13 to know about. Cyprus Foote// Chemicals (ck) which at  
14 one time -- that was taken over by Cyprus Mines and  
15 they're actually a separate entity for a while. They  
16 have coal companies. Each of the three major companies,  
17 Cyprus, AMAX and Phelps Dodge all dealt in basically  
18 anything that came out of the ground, mostly copper,  
19 though, but yes, we probably -- I don't know how many  
20 different entities there is but there's a bunch of them.

21 Q. And have you studied the relationships between  
22 these different corporate entities during your time at  
23 ETLS?

24 A. Yes.

25 Q. For what purpose?

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1 A. Well, to determine what policies and what  
2 claims go with each entity you have to know the time  
3 periods that they were in business, when they came into  
4 being, when they merged with, say, Cyprus or able /( or  
5 Phelps Dodge. You have to know what policies apply to  
6 the period of time that the suits that we get pertain  
7 to, so yeah, we -- we do kind of a time line on -- on  
8 everybody that we deal with.

9 Q. Please describe your current job duties at  
10 ETLS.

11 A. Current job right now is not a whole lot  
12 different than what it has been. We are still charged  
13 with reviewing all new suits that come in, trying to  
14 determine what program they go under, if there's any  
15 insurance coverage that might apply to them. If there  
16 is insurance coverage, we report it to those carriers.  
17 We set up the claims on a database that we could keep  
18 pretty much rolling inventory of everything we're  
19 working on, and that Phelps Dodge or Freeport can also  
20 see the same thing we're seeing.

21 We handle any questions that the carriers may  
22 have. We report something if they either don't quite  
23 agree with what we've got or have some questions, we  
24 supply information to help answer those questions. We  
25 deal with Phelps Dodge coverage counsel -- actually,

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1 Freeport coverage counsel now -- on any new situations  
2 that we run into that we might not have in the past that  
3 needs some type of review as to coverage, as to possibly  
4 what entity they actually fit under. We do that type of  
5 thing.

6 We -- we monitor bills. We're setting up  
7 methods that help us to be more alert to be able to  
8 monitor -- methods to monitor bills that aren't being  
9 paid properly. We send out arrearage letters. That's  
10 something that's a little bit new now. I particularly  
11 don't send those out. We have somebody else that does  
12 that. Mostly just the same thing we've been doing.

13 Q. As part of your job, do you perform a  
14 historical review of insurance policies?

15 A. Yes.

16 Q. And can you speak briefly about the difference  
17 between primary and excess insurers with respect to the  
18 duty to defend?

19 A. Primary and excess -- all the primary policies  
20 that apply to this program have defense in them//. Some  
21 of the excess policies do, some of them don't. It's  
22 just according to how the policy is worded.

23 The primary policies all have a duty to defend  
24 on claims that there is any likelihood that there might  
25 be a payment on any claim involved in the future. That